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**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2004-0157-MWD-E TCEQ ID: RN101611283 CASE NO.: 12584**  
**RESPONDENT NAME: CITY OF NACOGDOCHES**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Nacogdoches Plant 2A on the east side of Bayou La Nana between Farm-to-Market Road 1275 and Farm-to-Market Road 2863 in Nacogdoches, Nacogdoches County</p> <p><b>TYPE OF OPERATION:</b> Wastewater Treatment Plant</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 17, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b></p> <p style="margin-left: 20px;">TCEQ Attorney: Mr. Ben Thompson, Litigation Division, MC 175, (512) 239-1297  Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p style="margin-left: 20px;">SEP Coordinator: Ms. Sharon Blue, Litigation Division, MC 175, (512) 239-2223</p> <p style="margin-left: 20px;">TCEQ Enforcement Coordinator: Mr. Terry Murphy, Air Enforcement Section, MC 149 (512) 239-5025</p> <p style="margin-left: 20px;">TCEQ Regional Contact: Mr. Ronald Hebert, Beaumont Regional Office, MC R-10 (409) 898-3838</p> <p style="margin-left: 20px;">Respondent: Mr. Jim Jeffers, City Manager, PO Box 630648, Nacogdoches, Texas 75963</p> <p style="margin-left: 20px;">Respondent's Attorney: Mr. Jim Mathews, Mathews &amp; Freeland LLP, 327 Congress Ave., Suite 300, Austin, Texas 78701</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p> <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review         </p> <p><b>Date of Complaints Relating to this Case:</b> None</p> <p><b>Dates of Investigation Relating to this Case:</b> December 9, 2003</p> <p><b>Date of NOE Relating to this Case:</b> December 22, 2003</p> <p><b>Background Facts:</b></p> <p>After extended negotiations, including finalizing the terms of a custom SEP, the Nacogdoches City Council approved the terms of the Agreed Order on September 4, 2007. A signed Agreed Order was received on September 18, 2007.</p> <p><b>MWD:</b></p> <p>Failed to comply with permitted effluents for ammonia nitrogen, chlorine residual, dissolved oxygen and total suspended solids [30 TEX. ADMIN. CODE § 305.125(1); TPDES Permit No. 10342-004, Effluent Limitations and Monitoring Requirements; TEX. WATER CODE § 26.121 (a)]</p>	<p><b>Total Assessed:</b> \$15,975</p> <p><b>Total Deferred:</b> \$0</p> <p> <input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay         </p> <p><b>SEP Conditional Offset:</b> \$15,975</p> <p><b>Total Paid to General Revenue:</b> \$0</p> <p>The administrative penalty amount of \$15,975 shall be offset by the City's completion of a Supplemental Environmental Project (SEP).</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor         </p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor         </p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Action Taken:</b></p> <p>The Executive Director of the TCEQ recognizes that the Facility returned to compliance with permitted effluent limits for TPDES Permit No. 10342-004 on October 1, 2003.</p> <p><b>Ordering Provisions:</b></p> <p>The Respondent shall implement and complete a Supplemental Environmental Project (SEP) as outlined in Attachment "A" of the Agreed Order.</p>

Attachment A  
Docket Number: 2004-0157-MWD-E

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	City of Nacogdoches
<b>Penalty Amount:</b>	Fifteen thousand nine hundred seventy-five dollars (\$15,975)
<b>SEP Offset Amount:</b>	Fifteen thousand nine hundred seventy-five dollars (\$15,975)
<b>Type of SEP:</b>	Custom with pre-approved concept: erosion control
<b>Location of SEP:</b>	Nacogdoches County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative Penalty Amount assessed in this Agreed Order for the Respondent to perform a Supplemental Environmental Project ("SEP"). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**A. Project**

The Respondent shall construct a retaining wall to control erosion and stabilize the east bank of Banita Creek, south of West Main Street (State Highway 21). Erosion along the creek bank has resulted in loss of soils and silting of the creek. The Respondent proposes to construct the wall because the slope of the bank is too steep to maintain native vegetation as a means to control the erosion. The Respondent proposes this SEP to take advantage of cost sharing with a private entity whose property is also impacted by the erosion. A portion of the eroded bank is very close to the pier and beam foundation that supports an historic building. The Respondent is paying approximately 40% of the total project cost. The total project cost is estimated to be \$39,950.

The Respondent shall perform this project in accordance with accepted engineering practices and in accordance with all federal, state and local environmental laws and regulations. The Respondent shall use the SEP Offset Amount only for the direct cost of implementing the project and no portion shall be spent on administrative costs.

The Respondent certifies that it has no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

Generally, introduction of coarse sediment (coarse sand or larger) or a large amount of fine sediment is a concern because of the potential for filling lakes and reservoirs (along with the associated remediation costs for dredging, as well as clogging stream channels.) Large inputs of coarse sediment into stream channels may reduce stream depths and minimize habitat complexity by filling pools.

This SEP will provide a discernible environmental benefit by reducing the amount of creek bank erosion and sedimentation within Banita Creek. The Respondent estimates that approximately 20 cubic yards per year are lost to erosion in this area.

C. Minimum Expenditure

The Respondent shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A. The Respondent intends to use an independent contractor for this project; however in the unlikely event an independent contractor is not used, to the extent it can be documented labor by the Respondent shall be reimbursed at an overtime rate for the time its employees are used in implementing the SEP. The Respondent shall not receive credit for gratuities and/or inducement for volunteers.

2. **Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent shall begin implementation of this SEP. The Respondent shall complete the project within one (1) year after the effective date of this order.

3. **Reporting**

A. Progress Reports

Within 90 days after the effective date of this Agreed Order, the Respondent shall submit a report to the TCEQ indicating the progress made to date and setting forth a schedule for achieving completion within the time required above.

B. Final Report

Within 60 days after completion of the project, the Respondent shall submit a report to the TCEQ which includes:

1. An itemized list of expenditures and costs incurred with receipts, copies of checks, or other verifying documentation attached;
2. The total amount of costs incurred;
3. A statement of quantifiable environmental benefits;
4. Equipment logs showing the hours Respondent's equipment was utilized on the project;
5. Map showing specific location of the completed project;
6. Time records showing the hours Respondent's employees worked on the project;
7. Photographs of the completed project; and
8. Any additional information the Respondent believes will demonstrate compliance with this Attachment A.

C. Address

The Respondent shall submit all SEP reports and any requested additional information to the following address:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Additional Information and Access**

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

**5. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the TCEQ staff may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of an SEP. The payment for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**6. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**7. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program. Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**8. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other orders negotiated with the TCEQ or any other agency of the state or federal government.



Policy Revision 2 (09/02)

## Penalty Calculation Worksheet (PCW)

PCW Revision 3/13/2003

<b>DATES</b>			
PCW	6-Feb-2004	Screening	5-Feb-2004
Priority Due	5-Apr-2004	EPA Due	5-Mar-2004
<b>RESPONDENT INFORMATION</b>			
Respondent	City of Nacogdoches		
Respondent/Site ID No(s).	TPDES Permit No. 10342-004		
Facility/Site Region	10 - Beaumont	Major/Minor Source	Major
<b>CASE INFORMATION</b>			
Enf./Case ID No(s).	12584	No. Violations	1
Docket No.	2004-0157-MWD-E	Order Type	1660 without deferral
Case Priority	6	EC's Team	Team 4
Enf. Coordinator	Terry Murphy		
Media Program(s)	Water Quality		
Admin. Penalty \$ Limit	Minimum \$0	Maximum	\$10,000

## Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$7,500

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 138% Enhancement Subtotals 2, 3 &amp; 7 \$10,350

Notes The penalty was enhanced by one 1660-style agreed order, 20 NOVs for same or similar violations, and nine NOVs for dissimilar violations.

Culpability 0% Enhancement Subtotal 4 \$0

No Select Yes/No

Notes The Respondent does not meet culpability requirements.

Good Faith Effort to Comply 25% Reduction Subtotal 5 -\$1,875

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	X
None of the above	(mark with small x)

Notes The Respondent returned to compliance on October 1, 2003.

Economic Benefit 0% Enhancement\* Subtotal 6 \$0

\$993	Total EB Amounts	*Capped at the Total EB \$ Amount
\$1,000	Approx. Cost of Compliance	=

SUM OF SUBTOTALS 1-7 Final Subtotal \$15,975

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (enter number only; e.g. -30 for -30%)

Notes =

Final Penalty Amount \$15,975

## STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$15,975

DEFERRAL Deferral Reduction Adjustment \$0

Reduces the Final Assessed Penalty by the indicated percentage. (enter number only; e.g. 20 for 20% reduction)

Notes No deferral is offered because the Respondent has received an NOV and an Agreed Order for same or similar violations within the past five years. =

PAYABLE PENALTY \$15,975

<b>Screening Date</b> 5-Feb-2004 <b>Respondent</b> City of Nacogdoches <b>Case ID No.</b> 12584 <b>Respondent/Site ID No.</b> TPDES Permit No. 10342-004 <b>Media [Statute]</b> Water Quality <b>Enf. Coordinator</b> Terry Murphy <b>Site Address</b> East side of Bayou La Nana between FM 1275 and FM 2863, Nacogdoches, Nacogdoches County	<b>Docket Number</b> 2004-0157-MWD-E <b>PCW</b> <b>Policy Revision 2 (09/02)</b> <b>PCW Revision 3/13/2003</b>
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### Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	20	100%
	Other written NOVs	9	18%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission		0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )		0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government		0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )		0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )		0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )		0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )		0%
<i>Please enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** **138%**

>> **Repeat Violator (Subtotal 3)**

No ☐ ☒ Select Yes/No

**Adjustment Percentage (Subtotal 3)** **0%**

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer ☐ ☒ Select High, Average or Poor

**Adjustment Percentage (Subtotal 7)** **0%**

### Compliance History Summary

**Compliance History Notes**

The penalty was enhanced by one 1660-style agreed order, 20 NOVs for same or similar violations, and nine NOVs for dissimilar violations.

**Total Adjustment Percentage (Subtotals 2, 3 & 7)** **138%**

<b>Screening Date</b> 05-Feb-04		<b>Docket Number</b> 2004-0157-MWD-E		<b>PCW</b>	
<b>Respondent</b> City of Nacagdoches		<b>Policy Revision 2 (09/02)</b>			
<b>Case ID No.</b> 12584		<b>PCW Revision 3/13/2003</b>			
<b>Respondent/Site ID No.</b> TPDES Permit No. 10342-004					
<b>Media [Statute]</b> Water Quality					
<b>Enf. Coordinator</b> Terry Murphy					
<b>Violation Number</b>		<div style="border: 1px solid black; padding: 2px; text-align: center;">1</div>			
<b>Primary Rule Cite</b>		<div style="border: 1px solid black; padding: 2px;">30 Tex. Admin. Code § 305.125(1); TPDES Permit No. 10342-004, Effluent Limitations and Monitoring Requirements</div>			
<b>Secondary Cite(s)</b>		<div style="border: 1px solid black; padding: 2px;">Tex. Water Code § 26.121(a)</div>			
<b>Violation Description</b>		<div style="border: 1px solid black; padding: 2px;">Failure to comply with permitted effluent limits for ammonia nitrogen, chlorine residual, dissolved oxygen and total suspended solids, as detailed in the attached Effluent Limit Violation table.</div>			
				<b>Base Penalty</b>	<div style="border: 1px solid black; padding: 2px;">\$10,000</div>
» <b>Environmental, Property and Human Health Matrix</b>					
<b>Harm</b>					
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
<b>OR</b>	<b>Actual</b>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<b>x</b>	<b>Percent</b> <div style="border: 1px solid black; padding: 2px;">25%</div>
	<b>Potential</b>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	
» <b>Programmatic Matrix</b>					
	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
<b>OR</b>		<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<b>Percent</b> <div style="border: 1px solid black; padding: 2px;"></div>
		<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	
<b>Matrix Notes</b>	<div style="border: 1px solid black; padding: 5px;">A simplified model was utilized to evaluate CBOD5, NH3-N, and flow to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Failure to maintain compliance with permitted effluent limits resulted in the exposure of an insignificant amount of contaminants which did not exceed levels protective of human health or the environment.</div>				
				<b>Adjustment</b>	<div style="border: 1px solid black; padding: 2px;">-\$7,500</div>
				<b>Base Penalty Subtotal</b>	<div style="border: 1px solid black; padding: 2px;">\$2,500</div>
<b>Violation Events</b>					
<b>Number of Violation Events</b>		<div style="border: 1px solid black; padding: 2px; text-align: center;">3</div>			
<i>mark only one; use small x</i>		<b>daily</b>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
		<b>monthly</b>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
		<b>quarterly</b>	<b>x</b>		
		<b>semiannual</b>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
		<b>annual</b>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
		<b>single event</b>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
				<b>Violation Base Penalty</b>	<div style="border: 1px solid black; padding: 2px;">\$7,500</div>
<b>Events Notes</b>	<div style="border: 1px solid black; padding: 5px;">Three quarterly events are recommended for the violation dates of 8/02, 9/02, 10/02, 5/03, 6/03, 7/03, 8/03, and 9/03, as documented during the record review conducted on 12/9/03.</div>				
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>		
<b>Estimated EB Amount (\$)</b>		<div style="border: 1px solid black; padding: 2px;">\$993</div>		<b>Violation Final Penalty total</b> <div style="border: 1px solid black; padding: 2px;">\$15,975</div>	
				<b>This Violation Final Assessed Penalty (adjusted for limits)</b> <div style="border: 1px solid black; padding: 2px;">\$15,975</div>	



**Economic Benefit Worksheet**

**Respondent** City of Nacogdoches  
**ID Number(s)** 12584  
**Media [Statute]** Water Quality  
**Violation Number** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (As needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling	\$500	1-Aug-2002	1-Oct-2003	1.2	\$29	n/a	\$29
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (As Needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs for additional oversight and sampling to reduce or alleviate exceedances. The Date Required is the date of the first exceedance, and the Final Date is date the Respondent returned to compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$500	1-Aug-2002	1-Jun-2004	1.8	\$46	\$918	\$964
Supplies/equip				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx Cost of Compliance \$1,000

TOTAL \$993

# Effluent Limit Violation Table

Respondent	City of Nacogdoches
ID Number(s)	TPDES Permit No. 10342-004
Docket Number	2004-0157-MWD-E
Enf. Coordinator	Terry Murphy

Corresponds to Violation Number:

1

## EFFLUENT PARAMETER

### Permit Limit

	<i>NH<sub>3</sub>-N</i>	<i>NH<sub>3</sub>-N</i>	<i>D.O.</i>	<i>TSS</i>	<i>Chlorine Residual</i>
<i>Month/Year</i>	<i>2.0 mg/L daily avg.</i>	<i>10.0 mg/L daily max.</i>	<i>6.0 mg/L monthly min.</i>	<i>40.0 mg/L daily max.</i>	<i>1.0 mg/L monthly min.</i>
September 2003	c	c	c	176.0	c
August 2003	3.2	19.0	c	c	c
July 2003	c	c	c	c	0.8
June 2003	3.3	12.3	5.4	c	c
May 2003	3.5	c	c	c	c
October 2002	c	c	c	53.0	c
September 2002	c	c	c	49.0	c
August 2002	4.0	c	c	c	c

Name	Abbreviation
milligrams per liter	mg/L
pounds per day	lbs/day
million gallons per day	MGD
total suspended solids	TSS
5-day biochemical oxygen demand	BOD5
carbonaceous biochemical oxygen demand	CBOD
ammonia-nitrogen	NH <sub>3</sub> -N
dissolved oxygen	DO
compliant (no excursions)	c

948290352002066

## Compliance History

Customer/Respondent/Owner-Operator:	CN600134076	CITY OF NACOGDOCHES	Classification: AVERAGE	Rating: 2.81
Regulated Entity:	RN101611283	NACOGDOCHES PLANT 2A	Classification: AVERAGE	Site Rating: 2.96
ID Number(s):	PRETREATMENT	PERMIT	WQ0010342004	
	PRETREATMENT	EPA ID	TX0055123000	
	WASTEWATER	PERMIT	TPDES0055123	
	WASTEWATER	PERMIT	WQ0010342004	
	WASTEWATER LICENSING	LICENSE	WQ0010342004	
Location:	4200 RAYBURN DRIVE, NACOGDOCHES, TX, 75961		Rating Date: 9/1/03 Repeat Violator: NO	
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	January 26, 2004			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	January 26, 1999 to January 26, 2004			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Mike	Phone:	Limos	

### Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 4/21/01

ADMINORDER 2000-0862-MWD-E

Classification: Moderate

Citation: TWC Chapter 26 26.121

Citation: Not specified PERMIT

Description: Failure to comply with permitted effluent limits for ammonia nitrogen, CBOD5 and DO.

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The dates of investigations.

1 03/31/2000

2 01/24/2000

3 01/27/2003

4 01/25/2002

5 01/25/2001

6 01/06/2000

7 12/30/2002

8 12/20/2001

9 12/27/2000

10 12/01/1999

11 11/15/2002

12 11/26/2001

13 11/20/2000

14 10/27/1999

15 10/28/2002  
16 10/19/2001  
17 09/23/2000  
18 09/23/2002  
19 06/27/2002  
20 01/03/2002  
21 09/21/2000  
22 11/06/2002  
23 08/23/2001  
24 08/25/2003  
25 03/09/2001  
26 01/02/2004  
27 02/04/2002  
28 05/23/2003  
29 11/06/2002  
30 02/13/2001  
31 07/24/2001  
32 07/27/2000  
33 06/24/2002  
34 06/25/2001  
35 06/15/2000  
36 05/23/2003  
37 03/05/2003  
38 11/06/2002  
39 05/22/2001  
40 05/31/2000  
41 10/27/2000  
42 08/01/2003  
43 04/24/2003  
44 11/06/2002  
45 06/27/2002  
46 12/15/1999  
47 04/25/2000  
48 03/24/2000  
49 03/24/2003  
50 12/18/2002  
51 11/06/2002  
52 11/21/2003  
53 03/23/2001  
54 03/24/2000  
55 02/18/2003  
56 02/21/2002  
57 02/23/2001  
58 02/22/2000

E. Written notices of violations (NOV).

Date: 12/31/2001

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 12/31/2000

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 08/01/2003

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 315, SubChapter A 315.1

Description: The City failed to issue a NOV as required in the enforcement response plan to E-Coatings, Inc. (an industrial user of the City of Nacogdoches wastewater treatment facilities).

Date: 10/31/1999

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 10/31/2002

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 09/30/1999

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 09/30/2002

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 09/30/2000

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 08/31/2002

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 01/03/2002

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Date: 06/30/2002

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 06/30/2001

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 02/04/2002

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Date: 05/31/2000

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 02/13/2001

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Date: 04/30/2002

Self Report? YES Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter

Date: 04/30/2000

Self Report? YES Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter

Date: 03/05/2003

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Date: 03/31/2000

Self Report? YES Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter

Date: 10/27/2000

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Date: 02/29/2000

Self Report? YES Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter

Date: 11/25/2003

Self Report? NO Classification: Moderate  
Rqmt Prov: PERMIT IA  
Description: Failure to discharge effluent that is compliant with permitted limitations

Self Report? NO Classification: Minor  
Rqmt Prov: PERMIT IA  
Description: Failure to report all >40% noncompliances to the Region 10 office and the Commission in Austin.

Self Report? NO Classification: Minor  
Rqmt Prov: PERMIT IA  
Description: Failure to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.

Self Report? NO Classification: Minor  
Rqmt Prov: PERMIT IA  
Description: Failure to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.

Self Report? NO Classification: Minor  
Rqmt Prov: PERMIT IA  
Description: Failure to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.

Self Report? NO Classification: Minor  
Rqmt Prov: PERMIT IA  
Description: Failure to file a complete annual sludge report

Date: 02/28/2002

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 12/15/1999  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to submit all required DMR parameter data  
 Date: 02/28/2001  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 02/28/2000  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 12/18/2002  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: NON-RPT VIOS FOR MONIT PER OR PIPE  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: NON-RPT VIOS FOR MONIT PER OR PIPE  
 Self Report? NO Classification: Moderate  
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 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: NON-RPT VIOS FOR MONIT PER OR PIPE  
 Date: 01/31/2002  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 01/31/2001  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]  
 Description: Failure to meet the limit for one or more permit parameter

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING CITY OF  
NACOGDOCHES;  
RN101611283

§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2004-0157-MWD-E**

**I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Nacogdoches ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and the City, represented by Jim Matthews of the law firm of Matthews & Freeland, L.L.P., appear before the Commission and together stipulate that:

1. The City owns and operates a wastewater treatment plant located on the east side of Bayou La Nana between Farm-to-Market Road 1275 and Farm-to-Market Road 2863 in Nacogdoches, Nacogdoches County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
4. The City received notice of the violations alleged in Section II ("Allegations") on or about December 27, 2003.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of fifteen thousand nine hundred seventy-five dollars (\$15,975.00) is assessed by the Commission in settlement of the violations alleged

in Section II ("Allegations"). Fifteen thousand nine hundred seventy-five dollars (\$15,975.00) of the administrative penalty shall be conditionally offset by the City's completion of a Supplemental Environmental Project (SEP) as defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Facility returned to compliance with permitted effluent limits for TPDES Permit No. 10342-004 on October 1, 2003.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

The City is alleged to have violated 30 TEX. ADMIN. CODE § 305.125(1), TEXAS WATER CODE § 26.121(a), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 10342-004, Effluent Limitations and Monitoring Requirements by failing to comply with permitted effluents for ammonia nitrogen, chlorine residual, dissolved oxygen and total suspended solids as documented on December 9, 2003 and as detailed in the effluent violation table below.

### Effluent Violation Table

Parameter  
Permit limit

<u>Month/Year</u>	<u>NH<sub>3</sub>-N</u> 2.0 mg/L daily avg.	<u>NH<sub>3</sub>-N</u> 10.0 mg/L daily max.	<u>D.O.</u> 6.0 mg/L monthly min.	<u>TSS</u> 40.0 mg/L daily max.	<u>Chlorine Residual</u> 1.0 mg/L monthly min.
<u>September 2003</u>	c	c	c	176.0	c
<u>August 2003</u>	3.2	19.0	c	c	c
<u>July 2003</u>	c	c	c	c	0.8
<u>June 2003</u>	3.3	12.3	5.4	c	c
<u>May 2003</u>	3.5	c	c	c	c
<u>October 2002</u>	c	c	c	53.0	c
<u>September 2002</u>	c	c	c	49.0	c
<u>August 2002</u>	4.0	c	c	c	c

<u>Name</u>	<u>Abbreviation</u>
Ammonia Nitrogen	NH <sub>3</sub> -N
Dissolved Oxygen	DO
Total Suspended Solids	TSS
milligrams per liter	mg/L
Compliant	c

### III. DENIALS

The City generally denies each allegation in Section II ("Allegations").

### IV. ORDER

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here.
2. The City shall implement and complete a Supplemental Environmental Project ("SEP") in accordance with TEX. WATER CODE § 7.067 and as set forth in Section I, Paragraph 6,

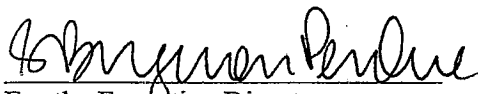
above. Fifteen thousand nine hundred seventy-five dollars (\$15,975.00) of the assessed administrative penalty shall be offset with the condition that the City implement and complete the SEP pursuant to the terms of the SEP as defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

3. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the City fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission



\_\_\_\_\_  
For the Executive Director

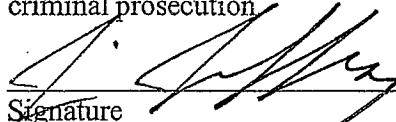
11/28/07  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions in this order and/or City of Nacogdoches' failure to timely pay the penalty amount, may result in:

- A negative impact on City of Nacogdoches' compliance history;
- Greater scrutiny of any permit applications submitted by City of Nacogdoches;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against City of Nacogdoches;
- Automatic referral to the Attorney General's Office of any future enforcement actions against City of Nacogdoches; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution

  
Signature

09/11/07  
Date

JIM JEFFERS  
Name (Printed or typed)  
Authorized representative of  
City of Nacogdoches

CITY MANAGER  
Title

**Attachment A**  
**Supplemental Environmental Project**

Attachment A  
Docket Number: 2004-0157-MWD-E

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	City of Nacogdoches
<b>Penalty Amount:</b>	Fifteen thousand nine hundred seventy-five dollars (\$15,975)
<b>SEP Offset Amount:</b>	Fifteen thousand nine hundred seventy-five dollars (\$15,975)
<b>Type of SEP:</b>	Custom with pre-approved concept: erosion control
<b>Location of SEP:</b>	Nacogdoches County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative Penalty Amount assessed in this Agreed Order for the Respondent to perform a Supplemental Environmental Project ("SEP"). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project

The Respondent shall construct a retaining wall to control erosion and stabilize the east bank of Banita Creek, south of West Main Street (State Highway 21). Erosion along the creek bank has resulted in loss of soils and silting of the creek. The Respondent proposes to construct the wall because the slope of the bank is too steep to maintain native vegetation as a means to control the erosion. The Respondent proposes this SEP to take advantage of cost sharing with a private entity whose property is also impacted by the erosion. A portion of the eroded bank is very close to the pier and beam foundation that supports an historic building. The Respondent is paying approximately 40% of the total project cost. The total project cost is estimated to be \$39,950.

The Respondent shall perform this project in accordance with accepted engineering practices and in accordance with all federal, state and local environmental laws and regulations. The Respondent shall use the SEP Offset Amount only for the direct cost of implementing the project and no portion shall be spent on administrative costs.

The Respondent certifies that it has no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

Generally, introduction of coarse sediment (coarse sand or larger) or a large amount of fine sediment is a concern because of the potential for filling lakes and reservoirs (along with the associated remediation costs for dredging, as well as clogging stream channels.) Large inputs of coarse sediment into stream channels may reduce stream depths and minimize habitat complexity by filling pools.

This SEP will provide a discernible environmental benefit by reducing the amount of creek bank erosion and sedimentation within Banita Creek. The Respondent estimates that approximately 20 cubic yards per year are lost to erosion in this area.

C. Minimum Expenditure

The Respondent shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A. The Respondent intends to use an independent contractor for this project; however in the unlikely event an independent contractor is not used, to the extent it can be documented labor by the Respondent shall be reimbursed at an overtime rate for the time its employees are used in implementing the SEP. The Respondent shall not receive credit for gratuities and/or inducement for volunteers.

2. **Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent shall begin implementation of this SEP. The Respondent shall complete the project within one (1) year after the effective date of this order.

3. **Reporting**

A. Progress Reports

Within 90 days after the effective date of this Agreed Order, the Respondent shall submit a report to the TCEQ indicating the progress made to date and setting forth a schedule for achieving completion within the time required above.

B. Final Report

Within 60 days after completion of the project, the Respondent shall submit a report to the TCEQ which includes:

1. An itemized list of expenditures and costs incurred with receipts, copies of checks, or other verifying documentation attached;
2. The total amount of costs incurred;
3. A statement of quantifiable environmental benefits;
4. Equipment logs showing the hours Respondent's equipment was utilized on the project;
5. Map showing specific location of the completed project;
6. Time records showing the hours Respondent's employees worked on the project;
7. Photographs of the completed project; and
8. Any additional information the Respondent believes will demonstrate compliance with this Attachment A.

C. Address

The Respondent shall submit all SEP reports and any requested additional information to the following address:



Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Additional Information and Access**

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

**5. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the TCEQ staff may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of an SEP. The payment for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**6. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**7. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program. Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**8. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other orders negotiated with the TCEQ or any other agency of the state or federal government.